Supreme Court, U. S.
FILED
DEC 31 1975
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

* * *

NO. 75-9291

* * *

W. J. ESTELLE, JR., RALPH GRAY,
AND H. H. HUSBANDS,
Petitioners

V.

J. W. GAMBLE,
Respondent

* * *

APPENDIX

To The Petition For A Writ Of Certiorari
To The United States Court Of
Appeals For The Fifth Circuit

* * *

JOHN L. HILL
Attorney General of Texas

DAVID M. KENDALL
First Assistant Attorney General

JOE B. DIBRELL
Assistant Attorney General
Chief, Enforcement Division

BERT W. PLUYMEN
Assistant Attorney General

P. O. Box 12548
Austin, Texas 78711

ATTORNEYS FOR PETITIONERS

UNITED STATE DISTRICT COURT SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION.

HOUSTON, TEXAS.

J.W GAMBLE 235677A
WALLS UNIT P.O Box 32,
HUNTSVILLE, TEXAS, 77340
IN PROPRIA PERSONAM.

COMPLAINT

CIVIL ACTION NO.

(CIVIL RIGHT)

J.W. GAMBLE – PLAINTIFF

V.

W.J. ESTELLE JR. – DEFENDANTS, Director of the Texas Department of Corrections.
RALPH GRAY MEDICAL DIRECTOR. of the Texas Department of Correction.
H.H. Husbands. Warden of walls Unit.

CIVIL ACTION SUIT 42 USCA. SECTION 1983

TO THE HONORABLE JUDGE OF SAID COURT.

This is a civil action authorized By section 1983 to redress the Deprivation under Color of state laws of right secured By the constitution of the United State. The court has Jurisdiction under 28 U.S.C.A section 1343 Plaintiff seek Declaratory relief. pursuant to 28. U.S.C.A. section 2201 and 2202.

PLAINTIFF J.W. Hamble is and was at all time Mentioned herein a prisoner of the state of Texas in custody of the Texas Department of Correction He is Curlently confined in walls. Unit Huntsville Texas.

DEFENDANT W.J. Estelle Jr. is the Director of the Texas Department of Corection of the state of Tex he is legally responsible for the overall, operation of the Department and each institution under Jurisdiction including the Walls unit at Huntsville Texas, His address is Box 32 Huntsville Texas 77340

DEFENDANT. DR. Ralph Gray is the medical Director of the Texas Department of correction. He is legally responsible for the overall operation of the Centine Medical Department of the state Department of correction. His address is Box 32 Huntsville Texas 77340

DEFENDANT H. H Husbands is the worden of the Walls Unit, Huntsville Texas, He is legally responsible for the operation of the walls Unit and for the welfare of all the inmate of that Prison His address is Box 32 Huntsville Texas 77340

FACTS

on or about 9th Day of November 1973 about 930 Am plaintiff was working for the Texas Department of correction, plaintiff Job assignment was at the Textile mill Huntsville Texas working as a cotton picker machine operator, plaintiff was unloading cotton from a truck, the Bale of cotton weigh about 6.00 pounds each. plaintiff was flipping the cotton to the machine but the Bale of cotton fell flat plaintiff tried to keep the Bale of cotton from following flat the cotton fell on plaintiff, plaintiff lifted the Bale of cotton off himself and injury plaintiff lower Back.

plaintiff work for about four more hour. operation the picker machine But didnot handle anny more Bale of cotton after four hour. - plaintiff got very stiff, then plaintiff asked a officer at the textile mill for a pass to the Unit hospital plaintiff went to the unit hospital and was checked By a medical assistance a captain Blunt captian Blunt check plaintiff for a Hernia But plaintiff didnot see a Doctor for his hurting captian Blunt didnot give plaintiff anny thing for plaintiff pain. Captain Blunt send plaintiff to the West Building 16B4 were plaintiff was living. plaintiff was hurting so Bad, plaintiff return to unit hospital to hour. later plaintiff seen a inmate nurse gave plaintiff two pain pill, finally plaintiff seen a Doctor.

on or about 10th Day of November 1973 at the unit hospital Doctor Name was Dr. astone, examind plaintiff and place plaintiff on cellpass and called, cellpass called is when plaintiff remain in his cell at all time. plaintiff was then move from west Building 1604 to first Building 31821 Doctor astone place plaintiff on Zoctirin π Tid x 5d and Robaxin π Tid x 7d. Dr. astone medical Record show that plaintiff Receive a lower Back strain plaintiff remain on cellpass called for two days Enclosed is exhibit Ⓒ

on or about 12th Day of November 1973, plaintiff Return to unit hospital and seen a Doctor astone he place plaintiff on cellpass called for another 7th days. plaintiff staid on some medication as above plaintiff remain in cell except for shower. Doctor astone place plaintiff on lower Bunk for one week. But the Building Department didnot issue plaintiff lower Bunk. plaintiff remain at first Building 31821 on top Bunk, enclose is exhibit Ⓐ for lower Back strain.

on or about 19th Day November 1973, plaintiff return to unit hospital and seen a Doctor astone he place plaintiff on Robaxin π Tid x 7d. and febridyne π Tid x 7d. for 7th days he place plaintiff on cellpass for 7th days, cellpass is when your remain in your cell at all time except for eating and shower. plaintiff move from first Building 31821 to west Building 1489 Enclosed is exhibit Ⓑ.

on or about 26th Day of November 1973 plaintiff Return to unit hospital for lower Back strain and seen a Doctor astone he place plaintiff on Zoctirin π Tid x 6d. for five days also place plaintiff on 7th days Cellpass. cellpass is when you go to eat and to shower. Enclosed is exhibit Ⓓ

Doctor Gray gave plaintiff a test for high Blood - - - pressure, the first reading was 168 over 112 the Doctor place plaintiff on high blood pressure pill name seraples for 7th days and place plaintiff on a pain pill name febridyne Tid 78 for 7th days plaintiff remain in administrative segregation 32-A-7 fine Building.

on or about 13th Day of December 1973, plaintiff return to unit hospital for lower Back hurting and high Blood pressure reading plaintiff seen a Doctor gray after plaintiff was on high blood pressure pill name seraples for 7th days the reading was 152 over 98 Doctor gray place plaintiff on seraples pill for 30th days But some how the unit staff lost plaintiff prescription and didnot find the prescription until plaintiff return to the unit hospital on the 17th Day of December 1973 But Doctor gray written the prescription on the 13th Day of December 1973 plaintiff remains in administrative segregation 32-A-7 fine Building.

on or about 17th day of December 1973, plaintiff return to unit hospital, plaintiff didnot a Doctor gray or anny other Doctor plaintiff seen a Captain Blunt medical assistance he place plaintiff on a pain pill name Diagnales for 7th days this pill is a muscle relaxer pill make the bottom of plaintiff stomach hurt plaintiff went to hospital for lower Back hurting, plaintiff remains in administrative - - - - segregation fine Building 32-A-7-,

on or about 27th day of December 1973, plaintiff return to unit hospital for lower Back hurting and didnot see Doctor Gray or anny other Doctor plaintiff seen a Captain Blunt medical assistance he gave plaintiff the Diagnales pill for 7th Days, plaintiff remains in administration segregation 32-A-7, fine Building.

on or about 3th Day of December 1973, plaintiff return to unit hospital for lower Back strain. and seen a Doctor ostone he taken plaintiff off callpass But left plaintiff on medicalcation a pill name febridyne Tid x 30. for 7th days, when your are taken off callpass this mean that you will do light works plaintiff told Doctor ostone that his lower Back was still hurting just as bad as the first day plaintiff was injured.

on or about 3th December 1973, plaintiff went to major muddot office, plaintiff talk major muddot that plaintiff was still hurting from his lower Back strain and that plaintiff was not going to work hurting major muddot had plaintiff move from west Building 148 to fine Building, 32-A-7 is in administrative segregation where plaintiff is now living.

on or about 5th Day of December 1973, plaintiff was taken in front of the unit disciplinary committee plaintiff told the committee that plaintiff was still hurting from lower Back strain and that the only thing that Doctor ostone had dis for his Back injury. was to give plaintiff pain pill, plaintiff explain to the committee, that plaintiff was under Doctor ostone care for 26th days and that Doctor didnot even notice that he suffer from high Blood pressure. The unit disciplinary committee didnot take any action against plaintiff, But send plaintiff to see another Doctor plaintiff remain in administrative segregation at 32-A-7 fine Building.

on or about 6th Day of December 1973 plaintiff went to the unit hospital and seen a Doctor Gray. Doctor Gray gave plaintiff a urinalysis test and a Blood analysis. that check off Doctor gray Medical Record show that plaintiff received a lower Back strain

on or about 3th Day of January 1974 [redacted] Captain Linsley came By plaintiff cell 32-A-7 fire Building and asked plaintiff if plaintiff wanted to go to work plaintiff answered was that plaintiff was not going to work hurting Captain Linsey said I will send you to the Farm. Plaintiff remains in administrative segregation 32-A-7 fire Building

on or about 5th Day of January 1974 lieutenant Ramsey came By plaintiff cell 32A-7 fire Building and asked plaintiff if Captain Linsey had talk to plaintiff. plaintiff said yes then lieutenant Ramsey asked plaintiff if plaintiff wanted to go to work. plaintiff told him that plaintiff was not going to work hurting lieutenant Ramsey said I will send you to the Farm. plaintiff remains in administrative segregation 32A-7 fire Building

on or about 7th Day of January 1974, plaintiff asked to go on sick call about 8:00 in the morning But at 12 noon officer [redacted] return and told plaintiff that he couldnot make sick call, plaintiff was going on sick call for his lower Back hurting and for migraine headaches.

on or about 7th Day of January 1974 plaintiff finely made it to the Unit hospital about 3 Pm that Same plaintiff went to hospital for lower Back hurting and migraine headaches and for high Blood pressure plaintiff didnot see Doctor Gray or anny other Doctor plaintiff saw a Captain Blunt he gave plaintiff a pill name sodium salicylate, T x 7 d. for 7th days and scropes Td. for 30th days Captain Blunt is a medical assistance plaintiff remains in administrative segregation 32A-7 fire Building

on or about 17th Day of January 1974 plaintiff went to unit hospital for lower Back hurting and stomach pain plaintiff didnot see Doctor Gray or anny other Doctor plaintiff saw a Captain Blunt medical assistance he gave plaintiff a pill name sodium salicylate T x 7 for 7th days plaintiff remains in administrative segregation 32A-7 fire Building.

on or about 23rd Day of January 1974 plaintiff went to the unit hospital for lower Back hurting plaintiff didnot see a Doctor Gray or anny other Doctor plaintiff saw a Captain Blunt medical assistance he gave plaintiff a pill name sodium salicylate T x 7 for 30th Days for lower Back hurting plaintiff remains in administrative segregation 32 A-7. fire Building.

on or about 31th Day of January 1974, plaintiff was Brought in front of the unit disciplinary committee for charges on the above date of [redacted] January 5th day. 1974 plaintiff told the committee that plaintiff was not going to work hurting... in Captain Linsey Report didnot state that... plaintiff had talk to him. Captain Report left out that plaintiff was hurting.

plaintiff told the committee that plaintiff lower Back was still hurting. plaintiff also explain to the committee that he suffer from high Blood pressure But the committee find... plaintiff guilt and put plaintiff into solitary confinement. no. Doctor or doctor aid or medical personnel checked Before putting plaintiff into Solitary confinement plaintiff was move from 32-A-7 to 3102 fire Building plaintiff case C72-116-20-HN is still on appeal. and have not made it to the Court of Criminal appeal in austin texas yet.

She unit disciplinary committee call. caption Blunt. medical assistance. he told the [redacted] committee that plaintiff medical class was still first class this was on the 31th day of January 974. plaintiff have Receive a Back injury and suffer from high Blood pressure and Heart trouble, But plaintiff is still in first class. plaintiff when he first was place in the Texas Department of correction Diognostic center the first thing plaintiff did was to tell the Doctor that plaintiff suffer from high Blood pressure. plaintiff remains in ---- solitary confinement.

~~on or about 4th day of February 1974~~, D... asked officer Ratini could plaintiff see a Doct: about 8 am. that morning plaintiff was having chest pain. and plaintiff was having Blank out. the ~~sargent~~ on duty said that he would have to check with the ~~warden~~ office. Becaus all inmate in solitary confinement would have to go thought the warden Before he could see a Doctor about 2 Pm. that evening ~~sargent~~ chance come on. he call the unit hospital. finely about 730 pm that night a medical personnel checked plaintiff and place plaintiff in the unit hospital for chest pain and high Blood pressure.

on or about 5th day February 1974, plaintiff saw a Doctor HEATON interpretation of [redacted] E.K.G. as follows: multipul. unifocal P.V.C.'s (Re-entry often), inverted "T" wave, A.V.R. - lead 3 (normal); elevated "P" wave. on the 6th day February 1974 plaintiff was move from hospital to 32A 20. five Building plaintiff remains in administrative segregation. Doctor Heaton place plaintiff on a pill name quinidine Tid x 3 for 3th days.

~~on or about 7th day of February 1974~~, plaintiff asked officer ~~spencer~~ and officer ~~Ratini~~ -- could plaintiff go on sick call for my [redacted] lower Back was hurting and plaintiff was having chest pain and plaintiff left arm hold the same pain as plaintiff chest did this was about 8 am in the morning plaintiff is in administrative segregation 32 A 20 five Building. and connat see a Doctor unless a officer take you, and they didnat take plaintiff on this days,

Plaintiff was discharge from the unit hospital on the 6th day of February 1974 But plaintiff was still having chest pain when plaintiff was discharge,

~~on or about 8th day of February 1974~~ plaintiff asked officer ~~spencer~~ and officer ~~Ratini~~ could plaintiff go on sick call. about 8 am in the morning about 12 noon officer ~~spencer~~ return and said they didnat want plaintiff to go on sick call he gave plaintiff no Reason why plaintiff could not go on sick call plaintiff was going on sick call for chest pain and lower back hurting plaintiff is also having Blank out when plaintiff stand up plaintiff is in administrative segregation 32 A 20 five Building and connat see a Doctor unless an officer take you and they didnat take plaintiff on this days.

~~on or about 9th day of February 1974~~ plaintiff asked officer spencer again could plaintiff go on sick call for chest pain, finally they let plaintiff go on [redacted] to the unit hospital, Doctor Heaton place plaintiff [redacted] on a short pill name quinidine Tid x 3 for 3th days plaintiff remains in administrative segregation 32 A 20. five Building

LEGAL CLAIMS

Plaintiff has receive a physical Back injury
Defendant Responsible W.J. Estelle Jr.
Director of the Texas Department of Correction
Bat 32. Huntsville Texas, he is Responsible for
all industrial mechinsary and work in the
Textile mill where plaintiff receive Back injury.

plaintiff, has'nt done anmything wrong to
plaintiff, Knowlage plaintiff is Being Discrimination
against and Privileges Taken away That is guarantee
guaranteed by fourteenth amendment,
Defendant Responsible H.H. Husbonds warden of
the wall unit Bat 32 Huntsville Texas, he is also
Responsible for sufficient man powder to
conduct work safety in the Textile mill area.
and due to innsufficent man. power plaintiff
sustain Back injury. also defendant failure to
provide medical care needed By plaintiff.
J.W. Hamble, Constituted, cruel and unusual pun-
ishment and punishment without due process
of law, that is guaranteed By fourteenth amendment.
also the Eight amendment United state constitution
plaintiff has receive inadequate medical
treatment for plaintiff injury.
Defendant Responsible Dr. Ralph Hoag medical
Director of the Texas Department of Correction
Bat 32 Huntsville, Texas, he is also Responsible
for medical facilities at the walls unit
where plaintiff is presently Being treated for
Back injury that plaintiff sustain in the Textile
mill at the walls unit Huntsville Texas plaintiff
also Being treated for high Blood pressure
and Heart truble,

plaintiff in this action does not complain about
the validity of his confinement but instead.
plaintiff complain about the wrong committed
By the three defendant about. which caused.
the plaintiff to suffer mental anguish.

Defendant W.J. Est. Jr. failure to provide medica
care needed By plaintiff J.W. Hamble constituted
cruel and unusual punishment and punishment
without due process of law of the fourteenth amend-
ment, also the eight amendment U.S. constitution
Defendant Dr. Ralph Hoag failure to provide medical
care needed By plaintiff J.W. Hamble constituted
cruel and unusual punishment and punishment
without due process of law of the fourteenth
amendment also eight amendment U.S. constitution
So the Honorable judge of said court if plaintiff
Don't onerved show cause order in the time
Required it will Be that defendant W.J Estelle Jr
or member of his staff would force plaintiff
in Solitary Confinement with the door closed and
they will shut let plaintiff used the will known
let plaintiff mail show cause order out.

Wherefore plaintiff respectfully prays that this
court enter judgment granting plaintiff.
① Declaratory judgment that the defendant acts
policies and practices described herein violate
plaintiff right under the United State Constitution

② a preliminary and permanent injunction
which
Ⓐ prohibits the defendants their successors in
offic agents and employees and all other persons
in actied concert and participation with them
from harassing threatening punishing or---
retaliating in any way against plaintiff Because
he filed this action.

Ⓑ prohibits defendant W.J. Estelle Jr and H.H. Husbonds
from transferring plaintiff to any other institution
without that plaintiff express consent during
the pendency of this action

© Require defendant W.J. Estelle Jr. member to remove from plaintiff prison files any write up or other report concering this events discribed herein and references to plaintiff possession of revolutionary literatures and- prohibits H.H Husbonds from permitting any reports to be placed in plaintiff files at any future time.

③ Trial By Jury all issues triable By Jury.

④ plaintiff cost of this suit

⑤ Compensatory Damages in the amount of. 100,000. Dollars to plaintiff from each defendant W.J. Estelle Jr. and Doctor Ralph Gray and H.H. Husbonds.

⑥ Punitive Damages in the amount of. 25,000. Dollars to plaintiff from each defendant W.J. Estelle Jr. and Doctor Ralph Gray and H.H. Husbonds.

⑦ Such other and further relief as this court may deem just. proper and equitable

⑧ plaintiff moves this court for an order permitting them to file this action in forma--- pauperis without prepayment of fee and costs or security therefor and appointing Tom M. Shaw. 1412 Main Street Dallas Texas 75202 a member of the Texas Bar to represent plaintiff as provided in 28 U.S.C. section 1915 and 18. U.S.C section 3006A (g) Because as their---- attached affidavits indicate plaintiff are unable to pay such costs or find security therefor and cannot afford to employ an attorney. this motion is Base on the complaint affidavits and memorandum of law. Submitted herewith.

Respectfully Submitted

J. W. Humble

J. W. Humble 235677-A
Walls Unit P.O. Box 32
Huntsville Texas 77340
In forma pauperis papers

Subscribed and sworn to
Before me this ___ of ___ 19__

Notary Public in and for
Walker County Texas

CLERK, U. S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
JUN 10 1974
V. BAILEY THOMAS, CLERK
BY DEPUTY:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

J. W. GAMBLE, §
§
Plaintiff, §
§
vs. § C.A. NO. 74-H-777
§
W. J. ESTELLE, JR., §
Director, Texas Department §
of Corrections; §
RALPH GRAY, Medical §
Director, Texas Department §
of Corrections; and §
H. H. HUSBANDS, Warden, §
Walls Unit, Texas §
Department of Corrections, §
§
Defendants. §

FINAL JUDGMENT

For reasons set forth in the United States Magistrate's Memorandum and Recommendation, signed on June 6, 1974, it is ORDERED that said Recommendation be and the same is hereby adopted as the Court's Memorandum and Order.

1. Leave to proceed in forma pauperis, in this Court only, is granted;

2. The Clerk is required to file this petition;

3. Plaintiff's request for appointment of counsel is denied;

4. This cause of action is hereby dismissed for failure of plaintiff to state a claim upon which he would be entitled to federal relief under the Civil Rights Act.

DONE at Houston, Texas, on this 10th day of June 1974.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLERK, U. S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
JUN 10 1974
V. BAILEY THOMAS, CLERK
BY DEPUTY

J. W. GAMBLE,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	C.A. NO. 74-H-777
	§	
W. J. ESTELLE, JR., Director, Texas Department of Corrections; RALPH GRAY, Medical Director, Texas Department of Corrections; and H. H. HUSBANDS, Warden, Walls Unit, Texas Department of Corrections,	§	
	§	
Defendants.	§	

June 6, 1974

MEMORANDUM AND RECOMMENDATION:

Plaintiff, an inmate in the Texas Department of Corrections,brings suit for declaratory and injunctive relief as well as for damages under the Civil Rights Act complaining that the named defendants have denied him adequate medical attention for a back injury incurred during a work assignment. Plaintiff further requests a jury trial, appointment of counsel, and permission to proceed in forma pauperis.

With respect thereto, it is RECOMMENDED as follows:

1. Permission to file in forma pauperis, in this Court only, be granted;

2. The Clerk be required to file this petition;

3. Plaintiff's request for appointment of counsel be denied;

4. This cause of action be dismissed for the failure of plaintiff to state a claim that would entitle him to relief under the Civil Rights Act.

It is clear that prison inmates are entitled to adequate medical care and [illegible]atment. State officials of necessity are vested with broad discretion in determining the nature and character of medical treatment to be afforded prison inmates and the federal courts are reluctant to interfere unless there is shown exceptional circumstances demonstrating an abuse of that discretion. Lawrence v. Wainwright, 440 F.2d 379 (5th Cir. 1971).

It is within the context of these well established general principles that the undersigned reviewed and considered the plaintiff's bare assertions of medical deprivation.

Apparently in November 1973, the inmate incurred a low back injury when a heavy bale of cotton fell on him while he was working in the textile mill at the Department of Corrections. The plaintiff then details a program of medical treatment, examinations by prison doctors, hospitalization and medical lay-ins he received on approximately 24 separate occasions between the date of the injury and extending into early this year.

The undersigned, by letter dated February 15, 1974, requested the plaintiff to clarify and particularize his allegations of deprivation in view of the program of treatment outlined in his pleadings. His response did not do so.

The plaintiff's allegations were again reviewed and are, in the judgment of the undersigned, insufficient to cause a federal court to interfere with the broad discretion permitted the prison officials in affording medical treatment to inmates in their trust.

For the foregoing reasons, it is RECOMMENDED that this cause of action be dismissed.

DONE at Houston, Texas, on this 6TH day of June 1974.

Howard Bland
UNITED STATES MAGISTRATE

CLERK, U. S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
AUG 12 1974
V. BAILEY THOMAS, CLERK
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

J. W. GAMBLE,)
)
Plaintiff,)
) CIVIL ACTION
V.)
) NO. 74-H-777
W. J. ESTELLE, Director,)
Texas Department of Corrections,)
ET AL,)
)
Defendants.)

RECEIVED
AUG 14 ..

J. W. Gamble, pro se.

John L. Hill, Attorney General of [illegible]
Texas, Larry F. York, Assistant [illegible]
Attorney General of Texas, Austin,
Texas, for defendants.

O R D E R

Before this Court for consideration is Plaintiff's Motion to Vacate Judgment. After due consideration, the motion is denied.

Plaintiff is hereby denied permission to prosecute his appeal in this case under Section 1915, Title 28, United States Code, since this Court believes that said appeal is lacking in merit and, as a result, is not taken in good faith.

DONE at Houston, Texas, this 12th day of August, 1974.

Carl O. Bue, Jr.
United States District Judge

nership in order to avoid any mechanics' liens against partnership property. These actions are irrelevant to the question of G.T.O.'s payroll taxes. In fact, Cooper himself had disbursed gross payroll checks from the partnership to G.T.O., so it is clear that G.T.O. always had an available source of revenue specifically intended for the withholding fund. We are satisfied that Cooper never had the kind of control over G.T.O. financial affairs which would require or even allow him to control the disposition of these funds. We therefore affirm the decision of the district court on the ground that Cooper was not a "person" within the meaning of that term as used in 28 U.S.C. §§ 6671(b) and 6672.

Having decided that Cooper was not within the intended reach of the term "person" under the penalty statute, we need not consider the question of the willfulness of his actions.

The judgment of the district court is affirmed.

KEY NUMBER SYSTEM

J. W. GAMBLE, Plaintiff-Appellant,

v.

W. J. ESTELLE, Director, Texas Department of Corrections, Defendant-Appellee.

No. 74-3727.

United States Court of Appeals, Fifth Circuit.

Aug. 4, 1975.

A state prisoner's pro se complaint was accepted for filing by the United States District Court for the Southern District of Texas at Houston, Carl O. Bue, Jr., J., but the cause was dismissed, without appointment of counsel, for failure to state a claim. The prisoner appealed. The Court of Appeals held that the complaint, alleging in effect that prisoner had sustained injury to his lower back while performing required work and that there had been a total failure to provide adequate diagnosis or treatment and that the prisoner had high blood pressure, "blank outs" and heart disease and was experiencing daily pain and suffering was sufficient to state an actionable claim under the 1871 civil rights statute for inadequate medical care.

Reversed and remanded with instructions to reinstate complaint, appoint counsel and permit appropriate amendment.

1. Federal Civil Procedure ⇐656

District courts must be sensitive to problems of pro se plaintiff in civil rights actions and not be too quick to dismiss for failure to state technical cause of action, and there should be even greater liberality on part of district court where State has not been required to file any pleading whatever. 42 U.S.C.A. § 1983; 28 U.S.C.A. §§ 2201, 2202.

2. Civil Rights ⇐13.4(5)

Court in civil rights actions by prisoners must exercise highest degree of care to make certain that prisoner is not deprived of his federally secured constitutional right to medical care. 42 U.S.C.A. § 1983; 28 U.S.C.A. §§ 2201, 2202.

3. Civil Rights ⇐13.12(6)

State prisoner's pro se complaint alleging in effect that he had sustained injury to lower back while performing required work and that there had been total failure to provide adequate diagnosis or treatment and that prisoner had high blood pressure, "blank outs" and heart disease and was experiencing daily pain and suffering was sufficient to state actionable claim under 1871 civil rights statute for inadequate medical care. 42 U.S.C.A. § 1983; 28 U.S.C.A. §§ 2201, 2202.

Daniel K. Hedges, Houston, Tex. (Court appointed), for plaintiff-appellant.

John L. Hill, Atty. Gen., Bert W. Pluymen, Asst. Atty. Gen., Austin, Tex., for defendant-appellee.

Appeal from the United States District Court for the Southern District of Texas.

Before CLARK, Associate Justice,* and GOLDBERG and AINSWORTH, Circuit Judges.

PER CURIAM:

Appellant J. W. Gamble is presently incarcerated in the Walls Unit of the Texas Department of Corrections. On May 30, 1974, he requested leave to file this civil rights action against three officials of the Texas Department of Corrections, appellees, under 42 U.S.C. § 1983, 28 U.S.C.A. §§ 2201 and 2202, alleging in a 24-page handwritten complaint "failure to provide medical care needed", in that "the only thing that [appellees] had did for his back injury [suffered while imprisoned] was to give [him] pain pills."

Gamble, it appears, was injured on November 9, 1973, when a 600-pound bale of cotton fell upon him during a prison work assignment at the prison textile mill in Huntsville, Texas. A United States Magistrate, without requesting a reply from the State officials, recommended, and the United States District Judge ordered, the following: (1) that permission to file the case be granted; (2) that the petition be filed; (3) that the request for appointment of counsel be denied; and (4) that the cause of action for injunction and damages be dismissed for failure to state a claim under the Act. After a motion to vacate this order and a request to prosecute this appeal was denied, this court granted Gamble's application for leave to appeal *in forma pauperis* and for the appointment of counsel.

The state officials contend that Gamble was not refused medical treatment, that the doctors applied the proper diagnostic techniques, and that the complaint did not allege any exceptional circumstances warranting judicial inquiry. We find the complaint sufficient in alleging that the action of the authorities was tantamount to a refusal of medical treatment and remand the case for further action in the light of this opinion.

I.

At the outset, we note that the State admits that Gamble, a prison inmate, was working in the textile mill by assignment of the appropriate official when he was injured. Gamble alleges that his injury was "due to insufficient manpower" at the installation and was aggravated by "failure to provide medical care needed . . ." It appears that appellant was unloading a truck when the injury occurred and that he continued to work for some four hours thereafter operating the "picker machine". Later he became stiff and requested a pass to the unit hospital, which was granted. At the hospital he was given a checkup for hernia by a medical assistant and was sent back to his cell. Two hours later, his pain had become so intense that he returned to the hospital and was initially seen by a nurse who gave him two pain pills, and later by a doctor who examined him but gave him no treatment. On November 10th, he was examined by a doctor who diagnosed the injury as lower back strain and prescribed Zactrin and Robaxin for the pain. The doctor placed him on a cell-pass cell-feed routine, in which the inmate remains in his cell at all times, save to make his toilet, and Gamble was moved from his original cell to Building No. 5. On November 12th and 19th, Gamble—at his request—again saw the same doctor, complaining of continued pain, but in each instance the only prescription given was pain pills and the cell-pass cell-feed routine. On November 26th, Gamble again returned to the hospital with the same symptoms, and the same doctor gave the same prescription, except that in addition he directed that Gamble's bunk be changed from the top to the lower tier for one week. This direction, it appears, was never effected.

* Of the Supreme Court of the United States (Retired) sitting by designation.

On December 3rd, Gamble was seen by the same doctor who took him off the cell-pass cell-feed routine and concluded that he was able to engage in light work, despite Gamble's statement that his back was still hurting just as bad as the first day it was injured. More pain pills were prescribed. Later during the same day, Gamble advised the prison administrative office that he was still hurting from his back injury and could not perform work. He was then placed in "administrative segregation" (i.e., solitary confinement) in Building No. 5, and on December 5 was taken before a prison disciplinary committee. He advised the committee, as he stated in his *pro se* petition, that he "was still hurting from lower back strain and that the only thing the doctor had did for his back injury was to give plaintiff pain pills." He further advised them that, although he had been under the doctor's care for some 26 days, the doctor had never noticed that he was suffering from high blood pressure; whereupon the Committee directed that he be examined by another doctor.

Gamble remained in "administrative segregation" throughout the months of December and January. On December 6th, he was examined by another doctor, who found his blood pressure to be 168 over 112, and he was given high blood pressure pills and pain pills for seven days. On December 13th, appellant again saw the second physician who renewed the same prescriptions for a 30-day period. On December 17th, appellant complained again of back pain and was given a prescription by a medical assistant. The same prescription was renewed for another week on December 27th.

On January 3, 1974, a prison officer asked Gamble if he wanted to go to work, to which appellant replied that "he was not going to go to work hurting". The officer stated that he would send appellant to the prison work farm. On January 5th, another officer threatened him with a transfer to the farm again. On January 7th, about 8:00 a.m., Gamble asked to be allowed to go on sick call for his back pain and migraine headaches, but it was not until 3 p.m. that his request was granted, and he was not allowed to see a doctor. A medical assistant gave him a week's supply of mild pain killers and a 30-day supply of high blood pressure pills. The issuance of pain pills was repeated on January 17th and January 25th.

On January 31st, Gamble was again brought before the disciplinary committee on the January 5th charge of refusing to work. The medical assistant told the committee that appellant's health was "first class", despite appellant's statement to the committee that his "lower back was still hurting" and that he suffered from high blood pressure. No physical examination whatever was given appellant for this hearing. The committee found him guilty and placed him in solitary confinement. Five days later—while still in solitary—at about 8 a.m. Gamble asked a guard if he could see a doctor because he was experiencing "chest pain" and, in appellant's words, "blank-outs". According to appellant, the sergeant on duty reported that, for inmates in solitary, such a request would have to be approved by the warden's office. Finally, about 7:30 p.m., a medical assistant checked Gamble and put him in the hospital for "chest pain and high blood pressure." The next day he was examined by a doctor, and Gamble's electrocardiogram was interpreted as follows: multiple unifocal P.V.C., S(re-entry often), inverted T wave, A.V.R.-lead 3 (normal), elevated P wave. On the following day, February 8, 1974, he was placed on quinidine, a heart relaxant, for three days. He was discharged from the hospital, although he still had chest pain which extended into his left arm, and returned to solitary.

On February 8, 1974, appellant asked a guard if he could go on sick call, complaining of lower back pain, chest pain, and blackouts when he stood up. The

guard went to check and, on his return, told appellant the prison officials did not want him to go on sick call. The next day appellant again complained of chest pain and saw the doctor who had previously given him the EKG at the unit hospital and who continued the quinidine prescription for another three days. On February 11, 1974, appellant signed the complaint, the dismissal of which is the basis of this appeal.

II.

Federal courts have traditionally been reluctant to interfere with the administration of prison systems, especially those of the States; nevertheless, we note that there has been a steady increase of cases in the federal courts involving attacks on the medical, as well as the disciplinary, procedures followed in prisons. While the bench has time and again suggested that administrative procedures be established to handle complaints such as the one Gamble presents here, the response from the States has been minimal. As a result, we are obliged to hear and decide such cases under somewhat broad constitutional principles.

In considering *pro se* applications under Section 1983, we invariably find that prisoners—who are illiterate and unable to express themselves in the clear and unequivocal language required in legal pleadings—have been required to write out the complaints themselves, largely in long hand and with no knowledge whatever of the legal procedures involved. Consequently, we read such complaints with liberality and to the facts alleged, take the facts as true in cases such as the one here, and examine the record with special care and scrutiny. Though we are pleased to see from the State's brief before this court that it agrees with these standards, we again express regret that it has not yet established the sort of administrative procedures in its criminal justice system which would have obviated the filing of cases such as this one.

On the merits, the State says that the complaint here alleges neither a deprivation of medical care nor inadequate medical treatment under such exceptional circumstances as to permit federal intervention. *See Stiltner* v. *Rhay*, 371 F.2d 420 (9th Cir. 1967); *Freeman* v. *Lockhart*, 503 F.2d 1016 (8th Cir. 1974); *Corby* v. *Conboy*, 457 F.2d 251 (2d Cir. 1972); *Thomas* v. *Pate*, 493 F.2d 151 (7th Cir. 1974); and *Fitske* v. *Shappell*, 468 F.2d 1072 (6th Cir. 1972). The Magistrate based his recommendation to dismiss on the proposition that the complaint must allege an "abuse of discretion by state prison authorities in providing medical treatment for prisoners." *Lawrence* v. *Wainwright*, 440 F.2d 379, 380 (5th Cir. 1971). We do not find any of these cases controlling here, for we think that appellant's complaint should be read to state a cause of action.

[1, 2] District courts must be sensitive to the problems of the *pro se* plaintiff in civil rights actions and not be too quick to dismiss for failure to state a technical cause of action. *See*, e. g., *Haines* v. *Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); *Wilbron* v. *Hutto*, 509 F.2d 621, 622 (8th Cir. 1975). While this complaint is not framed in terms of the cases cited by appellees, in part because Gamble is "unschooled" in the law, *see Granville* v. *Hunt*, 411 F.2d 9, 10 (5th Cir. 1969), such a situation calls for even greater liberality on the part of the district court, in our view, where the State has not been required to file any pleading whatever. Moreover where the general medical services afforded by the State in its prisons are publicly known to be "woefully inadequate" [1], the court must exercise

1. *See* Report of the Citizens Advisory Committee to the Joint Committee on Prison Reform of the Texas Legislature, filed on November 25, 1974, in Appellant's Brief, App.A, at A2–A26. The Committee found: "Even a cursory review of the Texas Department of Correction's medical program discloses extremely serious inadequacies. There is a serious shortage of trained and competent medical personnel—doctors, nurses, and technicians. At various times during our study of TDC, there were from one to three full-time doctors on the staff; their services are supplemented by use of a number of part-time physicians from the Huntsville area and localities near other units. But this is still not enough. [The TDC Medical Director] has administrative and supervisory responsibility for all medical care for the entire system of 17,000 inmates • • •. [T]he two other full-time doctors have resigned, leaving the already overworked [Director] to bear sole full-time responsibility for 17,000 inmates. • • •. [T]he demands are many times in excess of one man's capabilities." *Id.* at A5–A6.

the highest degree of care to make certain that a prisoner is not deprived of his federally secured constitutional right to medical care.

[3] As we read the pleading here, the State not only failed to diagnose Gamble's lower back injury which he suffered while in the performance of work required by it, but the State has totally failed to provide adequate treatment of that condition. Again and again, as the complaint makes clear, the only medication prescribed was to relieve the pain, not to cure the injury; indeed, the exact nature of the back injury remains unknown. Certainly the pain pills had no curative effect, even though they were administered for some 3 months. Moreover, Gamble still has his high blood pressure, "blank outs", and heart disease. And what makes this all the more disconcerting is the fact that he has spent months in solitary confinement without medical care and stands a good chance of remaining that way without intervention.

We can only conclude that Gamble has stated an actionable claim under Section 1983 for inadequate medical care. *See Williams* v. *Vincent*, 508 F.2d 541 (2d Cir. 1974); *Tolbert* v. *Eyeman*, 434 F.2d 625 (9th Cir. 1970). Certainly an x-ray of his lower back might have been in order and other tests conducted that would have led to appropriate diagnosis and treatment for the daily pain and suffering he was experiencing. *Robinson* v. *Jordan*, 494 F.2d 793 (5th Cir. 1974); *Hutchens* v. *Alabama*, 466 F.2d 507 (5th Cir. 1972); *Bilton* v. *Beto*, 470 F.2d 988 (5th Cir. 1972).

The judgment is, therefore, reversed and the cause is remanded with instructions to re-instate the complaint, appoint counsel and permit appropriate amendment thereto to the end that Gamble's constitutional rights are fully protected and that he receives all legal relief to which he may show himself entitled.

Reversed and remanded.

UNITED STATES of America, Plaintiff-Appellee,

v.

William Ervin ALFORD and Jimmie Ellis Scott, Defendants-Appellants.

No. 74-3154.

United States Court of Appeals, Fifth Circuit.

July 30, 1975.

Defendants were indicted for conspiracy and possession and sale of untaxed liquor. After a mistrial was declared during the course of their first trial, defendants were convicted in the United States District Court for the Southern District of Alabama, Virgil Pittman, Chief Judge, and they appealed. The Court of Appeals, Goldberg, Circuit Judge, held that where defendants were mistakenly served with a one count indictment alleging 15 overt acts and only one defendant subsequently received the seven-count, twenty-one overt act indictment on which defendants were being tried, a declaration of mistrial as to the defendant who did not receive the indictment was proper but mistrial was improper as to the other defendant; and

United States Court of Appeals

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

600 CAMP STREET
NEW ORLEANS, LA. 70130
TELEPHONE 504-589-6514

October 2, 1975

TO ALL COUNSEL OF RECORD

No. 74-3727 - J. W. Gamble vs. W. J. Estelle,
Director, Texas Dept. of Corrections

Dear Counsel:

This is to advise that an order has this day been entered denying the petition( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

EDWARD W. WADSWORTH, Clerk

by Clerk's Office
Deputy Clerk

cc: Mr. J. W. Gamble
Mr. Daniel K. Hedges
Mr. Bert W. Pluymen

AFFIDAVIT

Before me, the undersigned authority, appeared Steve Renfrow, on this the 15th day of August, 1975, who after being by me first duly sworn upon his oath deposed as follows:

"My name is Steve Renfrow, and I am the administrative aide to Senator Chet Brooks, Chairman of the Joint Committee on Prison Reform, created by the 63rd Legislature of the State of Texas. In my capacity as administrative aide, I have personal knowledge of the Report from the Citizens Advisory Committee to the Joint Committee on Prison Reform.

Mr. Paul R. Gavia, Assistant Attorney General for the State of Texas, handed me the Brief for Appellant in cause no. 74-3727, filed in the United States Court of Appeals for the Fifth Circuit. I have had an opportunity to read and examine Appendix A to this Brief, which consists of a letter of transmittal to Senator Brooks and section 2 of the Report from the Citizens Advisory Committee to the Joint Committee on Prison Reform.

I wish to state that the Report as reproduced in Appellant's Brief was not prepared by the Joint Committee on Prison Reform of the Texas Legislature; that the Report was only one one of a series of working papers presented to the Joint Committee during the course of its deliberations; that the report was issued after an independent study by the Citizens Advisory Committee; and it was neither endorsed nor adopted by the Joint Committee or by the Texas Legislature.

Further deponeth sayeth not.

STEVE RENFROW

Sworn and Subscribed to before me by Steve Renfrow on this the 15th day of August, 1975.

Notary Public in and for the
County of Travis, State of
Texas